

Rule 4. Pictures and Voice Recordings**Rule 4.01 General Rule**

Except as set forth in this rule, no pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by order of the chief judge made available in the office of the court administrator in the county, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.

This rule may be superseded by specific rules of the Minnesota Supreme Court relating to use of cameras in the courtroom for courtroom security purposes, for use of videotaped recording of proceedings to create the official recording of the case, or for interactive video hearings pursuant to rule or order of the Supreme Court. This Rule 4 does not supersede the provisions of the Minnesota Rules of Public Access to Records of the Judicial Branch.

(Amended effective March 1, 2009.)

Rule 4.02 Exceptions

(a) A judge may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration.

(b) A judge may authorize the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.

(c) A judge may authorize, with the consent of all parties in writing or made on the record prior to the commencement of the trial in criminal proceedings, and without the consent of all parties in civil proceedings, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) There shall be no audio or video coverage of jurors at any time during the trial, including *voir dire*.

(ii) There shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.

(iii) Audio or video coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom, and shall not extend to activities or events substantially related to judicial proceedings that occur in other areas of the court building.

(iv) There shall be no audio or video coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.

(v) During or preceding a jury trial, there shall be no audio or video coverage of hearings that take place outside the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings in criminal proceedings would include those to determine the admissibility of evidence, and those to determine various motions, such as motions to suppress evidence, for judgment of acquittal, *in limine* and to dismiss. This provision does not prohibit audio or video coverage of appropriate pretrial hearings in civil proceedings, such as hearings on dispositive motions.

(vi) There shall be no audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, child protection proceedings, paternity proceedings, petitions for orders for protection, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets, undercover agents, and proceedings that are not accessible to the public.

(d) **Criminal proceedings: pilot project.** Notwithstanding the lack of consent by the parties, for purposes of the pilot project authorized by order of the supreme court, upon receipt of notice from the media pursuant to Rule 4.03(a), a judge must, absent good cause, allow audio or video coverage of a criminal proceeding occurring after a guilty plea has been accepted or a guilty verdict has been returned. To determine whether there is good cause to prohibit coverage of the proceeding, or any part of it, the judge must consider (1) the privacy, safety, and well-being of the participants or other interested persons; (2) the likelihood that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice. Coverage under this paragraph is subject to the following limitations:

(i) No audio or video coverage is permitted when a jury is present, including for hearings to determine whether there are aggravating factors that would support an upward departure under the sentencing guidelines, or new pretrial and trial proceedings after a reversal on appeal or an order for a new trial.

(ii) No coverage is permitted at any proceeding held in a problem-solving court, including drug courts, mental health courts, veterans courts, and DWI courts.

(iii) No coverage is permitted in cases involving charges of criminal sexual conduct brought pursuant to Minnesota Statutes, sections 609.293 to 609.352, or in cases involving charges of family or "domestic" violence as defined in Minnesota Statutes, section 609.02, subdivision 16.

(iv) No audio or video coverage is permitted of a testifying victim, as defined in Minnesota Statutes, section 611A.01, paragraph (b), unless that person affirmatively acknowledges and agrees in writing before testifying to the proposed coverage.

(v) Audio or video coverage must be limited to proceedings conducted within the courtroom, and shall not extend to activities or events substantially related to judicial proceedings that occur in other areas of the court building.

(vi) No audio or video coverage within the courtroom is permitted during recesses or at any other time the trial judge is not present and presiding.

(Added effective March 1, 2009; amended effective March 12, 2009; amended effective July 1, 2011; amended effective November 10, 2015.)

Rule 4.03 Procedures Relating to Requests for Audio or Video Coverage of Authorized District Court Proceedings

The following procedures apply to audio and video coverage of civil district court proceedings where authorized under Rule 4.02(c), or in criminal proceedings subject to the pilot project authorized by supreme court order and Rule 4.02(d):

(a) **Notice.** Unless notice is waived by the presiding judge, the media shall provide written notice of their intent to cover authorized district court civil proceedings by either audio or video means to the judge, all counsel of record, and any parties appearing without counsel as far in advance as practicable, and at least 10 days before the commencement of the hearing or trial. A copy of the written notice shall also be provided to the State Court Administrator's Court Information Office. The media shall also notify their respective media coordinator identified as provided under part (e) of this rule of the request to cover proceedings in advance of submitting the request to the trial judge, if possible, or as soon thereafter as possible.

(b) **Objections.** If a party opposes audio or video coverage, the party shall provide written notice of the party's objections to the presiding judge, the other parties, and the media requesting coverage as soon as practicable, and at least 3 days before the commencement of the hearing or

trial in cases where the media have given at least 10 days' notice of their intent to cover the proceedings. The judge shall rule on any objections and make a decision on audio or video coverage before the commencement of the hearing or trial. However, the judge has the discretion to limit, terminate, or temporarily suspend audio or video coverage of an entire case or portions of a case at any time.

(c) **Witness Information and Objection to Coverage.** At or before the commencement of the hearing or trial in cases with audio or video coverage, each party shall inform all witnesses the party plans to call that their testimony will be subject to audio or video recording unless the witness objects in writing or on the record before testifying.

(d) **Appeals.** No ruling of the presiding judge relating to the implementation or management of audio or video coverage under this rule shall be appealable until the underlying matter becomes appealable, and then only by a party.

(e) **Media Coordinators.** Media coordinators for various areas of the state shall be identified on the main state court web site. The media coordinators shall facilitate interaction between the courts and the electronic media regarding audio or video coverage of authorized district court proceedings. Responsibilities of the media coordinators include:

(i) Compiling basic information (e.g., case identifiers, judge, parties, attorneys, dates and coverage duration) on all requests for use of audio or video coverage of authorized trial court proceedings for their respective court location(s) as identified on the main state court web site, and making aggregate forms of the information publicly available;

(ii) Notifying the Minnesota Court Information Office of all requests for audio and video coverage of trial court proceedings for their respective court location(s) as identified on the main state court web site;

(iii) Explaining to persons requesting video or audio coverage of trial court proceedings for their respective court location(s) the local practices, procedures, and logistical details of the court related to audio and video coverage;

(iv) Resolving all issues related to pooling of cameras and microphones related to video or audio coverage of trial court proceedings for their respective court location(s).

(Added effective July 1, 2011; amended effective May 1, 2012; amended effective December 3, 2013; amended effective November 10, 2015.)

Rule 4.04 Technical Standards for Photography, Electronic and Broadcast Coverage of Judicial Proceedings

The trial court may regulate any aspect of the proceedings to ensure that the means of recording will not distract participants or impair the dignity of the proceedings. In the absence of a specific order imposing additional or different conditions, the following provisions apply to all proceedings.

(a) Equipment and personnel.

(1) Not more than one portable television or movie camera, operated by not more than one person, shall be permitted in any trial court proceeding.

(2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in any trial court.

(3) Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in any trial court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court. If no technically suitable audio system exists in the court, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the trial judge.

(4) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the trial judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude from a proceeding all media personnel who have contested the pooling arrangement.

(b) Sound and light.

(1) Only television camera and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Excepting modifications and additions made pursuant to Paragraph (e) below, no artificial, mobile lighting device of any kind shall be employed with the television equipment.

(2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings.

(3) Media personnel must demonstrate to the trial judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light requirements of this rule. A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding.

(c) Location of equipment and personnel.

(1) Television camera equipment shall be positioned in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. When areas that permit reasonable access to coverage are provided, all television camera and audio equipment must be located in an area remote from the court.

(2) A still camera photographer shall position himself or herself in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself or herself in a shooting position, he or she shall act so as not to attract attention by distracting movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

(3) Broadcast media representatives shall not move about the court facility while proceedings are in session.

(d) Movement of equipment during proceedings. News media photographic or audio equipment shall not be placed in, or removed from, the court except before commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned as required by (a)(3) above, may not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses may be changed within a court except during a recess in the proceedings.

(e) Courtroom light sources. When necessary to allow news coverage to proceed, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions do not produce distracting light and are installed and maintained without public expense.

Such modifications or additions are to be presented to the trial judge for review prior to their implementation.

(f) Conferences of counsel. To protect the attorney-client privilege and the effective right to counsel, there shall be no video or audio pickup or broadcast of the conferences which occur in a court between attorneys and their client, co-counsel of a client, opposing counsel, or between counsel and the trial judge held at the bench. In addition, there shall be no video pickup or broadcast of work papers of such persons.

(g) Impermissible use of media material. None of the film, videotape, still photographs or audio reproductions developed during, or by virtue of, coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

(Added effective March 1, 2009; amended effective July 1, 2011; amended effective December 3, 2013.)

Advisory Committee Comment - 2009 Amendment

This rule was initially derived from the local rules of three districts.

The Supreme Court has adopted rules allowing cameras in the courtrooms in limited circumstances, and it is inappropriate to have a written rule that does not accurately state the standards which lawyers are expected to follow. See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, No. C7-81-300 (Minn. Sup. Ct. May 22, 1989). The court has ordered an experimental program for videotaped recording of proceedings for the official record in the Third, Fifth and Seventh Judicial Districts. In re Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts, No. C4-89-2099 (Minn. Sup. Ct. Nov. 17, 1989) (order). The proposed local rule is intended to allow the local courts to comply with the broader provisions of the Supreme Court Orders, but to prevent unauthorized use of cameras in the courthouse where there is no right to access with cameras.

The rule was amended in 2009 to add Rule 4.02, comprising provisions that theretofore were part of the Minnesota Rules of Judicial Conduct. This change is not intended to be substantive in nature, but the provisions are moved to the court rules so they are more likely to be known to litigants. Canon 3(A)(11) of the Minnesota Code of Judicial Conduct is amended to state the current obligation of judges to adhere to the rules relating to court access for cameras and other electronic reporting equipment.

The extensive amendment of Rule 4 in 2009 reflects decades of experience under a series of court orders dealing with the use of cameras in Minnesota courts. See In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983); Order Permitting Audio and Video Coverage of Supreme Court Proceedings, No. C6-78-47193 (Minn. Sup. Ct. April 20, 1983); Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct, Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996) (reinstating April 18, 1983, program and extending until further order of Court). The operative provisions of those orders, to the extent still applicable and appropriate for inclusion in a court rule, are now found in Rule 4.

Amended Rule 4.01 defines how this rule dovetails with other court rules that address issues of recording or display of recorded information. The primary thrust of Rule 4 is to define when media access is allowed for the recording or broadcast of court proceedings. Other rules establish limits on access to or use of court-generated recordings, such as court-reporter tapes and security tapes. See, e.g., Minnesota Rules of Public Access to Records of the Judicial Branch.

Amended Rules 4.02(a) & (b) are drawn from Canon 3A(11)(a) & (b) of the Minnesota Code of Judicial Conduct prior to its amendment in 2008. Rule 4.02(c) and the following sections (i) through (vii) are taken directly from the Standards of Conduct and Technology Governing Still Photography, Electronic and Broadcast Coverage of Judicial Proceedings, Exhibit A to In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983).

Amended Rule 4.04 establishes rules applicable to the appellate courts, and is drawn directly from Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983).